AFDC has never been and is not now a comprehensive public assistance program. From its inception in 1935 until 1961 AFDC was not available to families with unemployed fathers. Although the program was so extended in 1961, state participation was not made mandatory, and at the present time only 25 states have AFDC-UF programs. Moreover, AFDC has never been available to families with an employed father even though a family's income level may fall below the need standard applicable to AFDC programs. See 42 U.S.C. 606(a) and 607(b); see also *Henry* v. *Betit*, 323 F. Supp. 418 (D. Alaska).

Although the goal of the AFDC program is to assist families who are in need, confronted with a finite amount of funds available for this purpose, Congress has chosen to allocate public assistance to those classes of families who are least able to change their circumstances. Historically, Congress has relied on minimum wage laws and collective bargaining, rather than AFDC, to assist the employed (*Macias* v. *Finch*, 324 F. Supp. 1252 (N.D. Cal.), affirmed *sub nom. Macias* v. *Richardson*, 400 U.S. 913), and on unemployment compensation as the primary means of assisting families with an unemployed father. See our main brief, pp. 19-20. Although that distinction was blurred in 1961 when AFDC was extended to families with unemployed fathers, it was essentially reestablished in 1968 with the enactment of the mandatory bar provision.

If equal protection principles require the extension of AFDC benefits to families where the father receives unemployment compensation, it is difficult to see why logically they do not also require the extension of AFDC to families where the father is employed—in short, they would require the development of a comprehensive public assistance program. See *Geduldig* v. *Aiello*, 417 U.S. 484, 495. But we submit that adoption of a comprehensive public assistance program is not consti-

tutionally required. The desirability of such a course of action is a matter for legislative determination and requires a resolution of conflicting interests and policies as to which there has historically been no consensus. See generally Moynihan, *The Politics of a Guaranteed Income* (1973).

Given the congressional goal of providing public assistance within a framework of limited funds, the exclusion of families where an unemployed father receives unemployment compensation has a rational basis.It is consistent with the historical reliance on unemployment compensation as the first line of defense for the unemployed, and, as recognized in *Burr* v. *Smith*, 322 F. Supp. 980, 985 (W.D. Wash.), affirmed, 404 U.S. 1027, unemployment compensation benefits promote attachment to the labor force, and such benefits "* * * which [are] temporary in nature, may act as a greater incentive for the unemployed to seek new employment than the receipt of welfare assistance." In many cases unemployment compensation benefits will approximate or exceed AFDC benefit levels and where unemployment compensation is inadequate it may be supplemented by other state assistance programs.[1] Finally, as pointed out in our main brief, states may upgrade their unemployment compensation and assistance programs.[2] Moreover, the exclusion is only temporary because of the limited duration of unemployment compensation benefits.[3] Upon the expiration

[1]Vermont has such an assistance program. As noted in our main brief, however, the level of benefits available is not shown in this record.

[2]As appellees' brief points out (App. B, p. 1b), since 1972 14 of the 25 states that have both unemployment compensation and AFDC-UF programs have upgraded their unemployment compensation programs. See also *Burr* v. *Smith, supra*, 322 F. Supp. at 982, n. 1.

[3]Under Vermont law, unemployment benefits are payable for a maximum of 26 weeks unless, in certain circumstances, they are extended for 39 weeks. See 21 V.S.A. 1340, 1421. In addition, under the Emergency Unemployment Act of 1974, Pub. L. 93-572, 88 Stat. 1869, under certain conditions, an additional 13 weeks (for a maximum of 52) of benefits, payable from federal funds, is available.

of such benefits, if the father remains unemployed, AFDC benefits are restored, assuming other eligibility conditions are satisfied.

We do not contend that the mandatory bar is the wisest or most socially desirable policy that could be devised, but we do submit that its rejection, on constitutional grounds, would entail a consideration of factors that this Court has repeatedly held inappropriate for judicial resolution. See, *e.g.*, *Jefferson* v. *Hackney*, *supra*, 406 U.S. at 541; *Dandridge* v. *Williams*, *supra*, 397 U.S. at 487; see also Note, *Developments in the Law—Equal Protection*, 82 Harv. L. Rev. 1065, 1082-1087, 1192 (1969).

For the foregoing reasons, and for the reasons set forth in our main brief, the judgment of the district court should be reversed.

Respectfully submitted.

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